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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

SEAN WILLIAM CUNNINGHAM,

Defendant and Appellant.

B214534

(Los Angeles County
Super. Ct. No. BA335650)

APPEAL from a judgment of the Superior Court of Los Angeles County.
Norman J. Shapiro, Judge. Affirmed as modified.

Kevin D. Sheehy, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Zee Rodriguez and Corey J. Robins, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant Sean William Cunningham appeals from a judgment entered after a jury convicted him of count 1, second degree robbery (Pen. Code, § 211);¹ count 4, second degree robbery (§ 211); count 5, second degree robbery (§ 211); count 6, second degree robbery (§ 211); and count 8, second degree robbery (§ 211). As to each count, the jury found true that appellant personally used a firearm within the meaning of section 12022.53, subdivision (b). The jury also found true the allegation that appellant personally inflicted great bodily injury upon Seidur Rahman within the meaning of section 12022.7, subdivision (a). Appellant admitted and the trial court found true that he had suffered a prior conviction within the meaning of sections 1170.12, subdivisions (a) through (d) and 667, subdivisions (b) through (i) and a prior serious conviction within the meaning of section 667, subdivision (a)(1).

Appellant contends on appeal that the abstract of judgment overstates the court security fee amount and understates the presentence custody credits. The People agree with appellant's contention. We also agree and modify the judgment and direct the trial court to correct the abstract of judgment.

FACTS AND PROCEDURAL BACKGROUND

The issues on appeal do not require a detailed or lengthy recitation of the facts. Suffice it to say that appellant committed a string of armed robberies of gas station attendants and an armed robbery of a man outside a bank between December 2007 and January 2008. He was arrested on January 28, 2008.

The sentence

The trial court sentenced appellant to state prison for a term of 49 years and four months consisting of the following: as to the principal term count 7, 10 years (the upper term of five years, doubled) plus enhancements of 10 years (§ 12022.53, subd.(b)), five years (§ 667, subd. (a)), and three years (§ 12022.7, subd. (a)); as to count 1, two years

¹ All further statutory references are to the Penal Code.

(one-third the middle term of three years doubled) plus an enhancement of three years four months (one-third of 10 years within the meaning of § 12022.53, subd. (b)); as to count 5, two years (one-third the middle term of three years doubled), plus an enhancement of three years four months (one-third of 10 years within the meaning of § 12022.53, subd. (b)); as to count 6, two years (one-third the middle term of three years doubled) plus an enhancement of three years four months (one-third of 10 years within the meaning of § 12022.53, subd. (b)); as to count 9, two years (one-third the middle term of three years doubled) plus an enhancement of three years four months (one-third of 10 years within the meaning of § 12022.53, subd. (b)). The sentences were all imposed to run consecutively.

The trial court awarded appellant a total of 448 days presentence custody credits, consisting of 391 actual custody days plus 57 days of good time/work time (equal to 15 percent of the actual custody time) (§ 2933.1). The trial court imposed a \$20 court security assessment (§ 1202.4, subd. (b)); stayed a \$200 parole restitution fine (§ 1202.45); and ordered a DNA sample (§§ 296, 296.1). The abstract of judgment indicates that the trial court imposed a total of \$120 in court security fees.

DISCUSSION

The judgment shall be modified and the abstract of judgment shall be corrected

Appellant contends, and the People concede, that the abstract of judgment must be corrected to reflect the imposition of five security fees and an additional day of conduct credit.

We first address the matter of the security fee. Section 1465.8, subdivision (a)(1) requires the imposition of a court security fee “on every conviction for a criminal offense.” The \$20 court security fee must be imposed for each count for which a defendant is convicted. (*People v. Crabtree* (2009) 169 Cal.App.4th 1293, 1327–1328; *People v. Schoeb* (2005) 132 Cal.App.4th 861, 865–866.)

Appellant was convicted of five counts. At sentencing, the trial court imposed one \$20 court security fee pursuant to section 1465.8, subdivision (a)(1). The abstract of

judgment indicates that security fees were imposed pursuant to section 1465.8, totaling \$120. At \$20 per conviction, the abstract of judgment implies that appellant was convicted of six rather than five counts. The abstract of judgment must be corrected to reflect the imposition of five security fees for each of the five counts, for a total of \$100. (*People v. Schoeb, supra*, 132 Cal.App.4th at p. 866 [abstract of judgment should be correct to reflect the imposition of the correct number of security fees].)

Next, we address the issue of custody credit. Convicted defendants are entitled to credit against their prison term for time spent in custody before sentencing. (§§ 2900.5, subds. (a) & (b), 4019). Where appropriate, six days are deemed served for every four days served in actual custody for good time/work time. (§ 4019, subd. (f).) Defendants convicted of certain specified felonies including robbery may receive no more than 15 percent good time/work time credit. (§ 2933.1).

Appellant was arrested on January 28, 2008 and was sentenced on February 23, 2009. He was entitled to credit for 391 days of actual custody, plus 15 percent for good time/work time, for an additional 58 days (a total of 449 days). But, the trial court awarded him credit for only 57 days of good time/work time credit. He is therefore entitled to one additional day of conduct credit. The failure to award a proper amount of credits is a jurisdictional error that may be raised at any time. (*People v. Karaman* (1992) 4 Cal.4th 335, 345–346, fn. 11, 349, fn. 15.) The judgment must be modified to reflect 449 days of total presentence custody credits.

DISPOSITION

The judgment is modified to award appellant 449 days of total presentence custody credits (391 days of actual custody plus 58 conduct days). As modified, the judgment is affirmed. The trial court is directed to amend the abstract of judgment to reflect 449 days of total presentence custody credits and to impose a total court security fee of \$100 and to send a certified copy of the amended abstract to the Department of Corrections and Rehabilitation.

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_____, J.

DOI TODD

We concur:

_____, P. J.

BOREN

_____, J.

CHAVEZ